

## LABOUR DEPARTMENT

The 18th February, 1987

No. 9/4/87-6Lab/584.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Super Tyre (Pvt.) Ltd., 71/3, Mile Stone, G. T. Road, Karnal.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No. 68 of 1984

between

SHRI BAKSHISH SINGH, WORKMAN AND THE MANAGEMENT OF  
M/S SUPER TYRE (PVT.) LTD., 71/3, MILE STONE, G. T. ROAD,  
KARNAL

*Present:*

Shri Harish Bagi, Authorised Representative, for the workman.

Shri Surinder Kaushal, Authorised Representative, for the management.

## AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Bakshish Singh, workman C/o Shri Harish Bagi, Secretary, Karnal Workers Union, Karnal and the management of M/s Super Tyre (Pvt.) Ltd., 71/3, Mile Stone, G. T. Road, Karnal, to this Tribunal for adjudication :—

Whether termination of service of Shri Bakshish Singh, was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to the parties who appeared.

3. The case of the petitioner is that he was employed as General Fitter with the respondent with effect from 5th July, 1982. His last drawn salary was Rs. 800 per month. He was designated Maintenance Supervisor but actually he was doing the job of General Fitter. His duties were manual and technical. He alleged that on 6th June, 1983 the management refused him duty without any reason. He thus challenged his termination's order as illegal and prayed that he reinstated with all back wages.

4. The stand of the petitioner is controverted by the respondent. It was pleaded that the petitioner was not a workman and as such the reference is bad in law. On merits it was pleaded that the petitioner joined with respondent on 2nd May, 1983 as Supervisor and worked upto 25th May, 1983 and thereafter started absenting from duty. In nut shell it was pleaded that the workman had rendered less than 240 days with the respondent and he had abandoned the job by absenting himself and thus was not entitled to any relief.

5. On the pleadings of the parties, the following issues were settled by my predecessor :—

(1) Whether the applicant is not a workman as pleaded ? OPM

(2) Whether the claimant absented from duty from 25th May, 1983 and took his full and final dues as pleaded ? OPM

(3) Whether the termination of services of Shri Bakshish Singh was justified and in order ? If not, to what relief is he entitled ? OPM

6. The petitioner has appeared in the witness box as WW-1 in support of his case and produced Ex.W-1 to W-4. The respondent examined Shri K. N. Sharma, Personnel Officer as MW-1 and produced documents Ex.M-1 to MM-2.

7. I have heard the learned Authorised Representatives of the parties. My findings on the aforesaid issues are as under:—

*Issue No. 1 :*

8. The petitioner stepped in the witness box as AW-1 and testified that he was appointed as General Fitter. His nature of job was manual and Technical. He worked on hydraulic pump, steam pipe lines etc.

9. On contrary K. N. Sharma MW-1 Personnel Officer of the respondent stated that Bakshish Singh joined their Company as Supervisor.

10. On considering the evidence led by both the parties, there is no difficulty in holding that the petitioner falls within the definition of the workman as given in Section 2 (s) of the Industrial Disputes Act, 1947. The petitioner's job was manual and technical. He worked with his own hands. Occasional entrustment of supervisory work will not take a person out of the purview of Section 2(s) of the Industrial Disputes Act, 1947 particularly when the petitioner was discharging technical and manual duties. The designation given to an employee is not conclusive. The main features, pith and substance of his employment was that he was technical hand primary doing manual job. Hence the petitioner was a workman and the issue is answered against the Management.

*Issue No. 2 and 3 :*

11. Both these issues are interconnected and would be discussed together. Bakshish Singh in support of his case deposed that he joined respondent company on 5th July, 1982 and was refused duty on 6th June, 1983. He relied upon two letters Ex.W-1 and W-3 and duty chart Ex. W-2 in support of his case.

12. On the contrary K. N. Sharma Personnel Officer of the respondent company MW-1 supported the stand of the management to the effect that Bakshish Singh joined services on 2nd May, 1983 and worked upto 25th May, 1983 and thereafter absented from duty. He got his wages and signed wages slip Ex. M-1.

13. On careful considering the evidence led by both the sides; I find that the version of the workman does not inspire confidence. There is no cogent evidence to establish that the workman joined the respondent company on 5th July, 1982. It is worth while to point out that in demand notice, the workman had not specified the date when he joined Respondent Company. It was only in the claim statement that the workman disclosed that he had joined the respondent company on 5th July, 1982. The petitioner has received two letters at the address of the Company. First in land letter Ex. W-1 is dated 4th November, 1982. The date put on the letter is in different ink than the ink of Contents of the letter. Post Office stamp is not clearly legible and as such it cannot be said that this letter was received by the workman in November, 1982 at the company address. Second letter is from Punjab National Bank asking Bakshish Singh to clear the loan amount. This letter is dated 4th April, 1983. The authenticity of this letter has also not been established because no bank record was summoned to prove the genuineness of this letter. Mere fact that the workman received two letters at the address of the respondent company would not indicate that he was in the employment of the company during that period. Bakshish Singh workman has not examined any other co-worker of the Company to prove that he was actually working with the respondent since July, 1982 as alleged by him. Besides this workman had also relied upon the duty chart Ex. W-2. This chart is of December, 1982. No weight can be given to this chart because it can be prepared at any time. The workman has himself prepared this chart and allegedly obtained the signatures of some workers but he has not examined any person who has signed on this chart. On other hand there is definite evidence given by the management that workman had worked for 23 days and received his wages for these days. Ex. M-2 is the abstract of payment of wages register. The entries therein are signed by the workman as admitted by him in cross-examination. The workman himself had produced only one wages slip Ex. W-4 whereby he had received wages of 23 days pertaining to May, 1983. The wage slip Ex. W-4 is in conformity with the entries in the payment of wages register Ex. M-2. The wage slip Ex.W-4 and payment of wages register Ex. M-2 clearly reveal that a sum of Rs. 15 was deducted from the salary of Bakshish Singh towards E.S.I. scheme. The petitioner could summon the record from E.S.I. Office provident Fund Office to prove his plea that he was working with the respondent since July, 1982 but he did not do so for the reasons rest known to him. He rather denied that E.S.I. Contribution was being deducted from his salary. He is falsified in this Context by entry in wages slip Ex.W-4 produced by him on the record. The workman has no other wage slip with him to show that he was actually working with the respondent Company prior to May, 1983. Under these circumstances, I hold that Bakshish Singh had worked only for 23 days with the respondent Company. Thus his service was less than 240 days and he can not get the benefits of the provisions of Section 25-F of the Industrial Disputes Act, 1947. His service could be dispensed with by the Management at any time as he was temporary employee who has rendered only 23 days of his service. It appears that the workman has himself absented from duty after rendering 23 days in service. This fact is apparent because he accepted his wages for 23 days,—vide wage slip Ex. W-4 without any protest.

In view of the aforesaid discussion, I hold that termination of service of Bakshish Singh was justified and in order and he is not entitled to any relief.

Dated the 19th January, 1987.

S. B. AHUJA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.